



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kilgore Corporation

File: B-235813

Date: June 19, 1989

DIGEST

1. When solicitation specifies that award will be made on the basis of price and "other factors," award must go to the lowest-priced, responsible offeror whose proposal is acceptable under the factors listed in the solicitation and evaluation credit may not be given for factors that are not listed.

2. Where solicitation did not provide for consideration of factors other than price and price related factors in the award determination, allegation that award should have been based on additional factors is untimely, since it was not filed before the time set for receipt of initial proposals.

DECISION

Kilgore Corporation protests the award of a contract to Maryland Assemblies, Inc., under request for proposals (RFP) No. DAAA09-88-R-1056 issued by the Army for Mark 124 signal kits.^{1/} We dismiss the protest without requiring the submission of a report by the Army since, on its face, the protest does not state a valid basis for protest. Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1988).

The solicitation stated that evaluation of offers would be based, "among other factors, upon the total price quoted for all items." The only factors listed in the solicitation were such price-related factors as transportation cost, use of government-owned property and option prices.

According to Kilgore, the Army awarded the contract to Maryland based solely on that firm's slightly lower price, even though its own offer was superior technically. The protester argues that, since the evaluation scheme mentioned

^{1/} Signal kits are day/night distress signals involving flairs and smoke.

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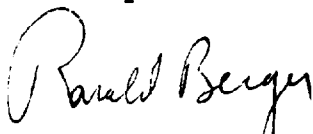
"other factors" and this was a negotiated acquisition, not a sealed bid one, the Army was required to consider in its evaluation technical factors as well as price. Further, according to Kilgore, the solicitation indicated that the acquisition involves hazardous materials and for that reason technical capability and quality should have been evaluated. Kilgore maintains that the Army should have considered such other factors as technical excellence, management capability, prior experience and past performance.

When a solicitation states that award will be made on the basis of price and "other factors," our Office has interpreted this phrase to include factors implicitly considered in any procurement, such as the responsibility of offerors and any other factor prescribed by law, regulation or the public interest. Pikes Peak Water Co., B-211984, Mar. 16, 1984, 84-1 CPD ¶ 315. The term "other factors," however, does not permit award to be based on factors which are not contained in the RFP and of which offerors were not apprised. CEL-U-DEX Corp., B-195012, Feb. 7, 1980, 80-1 CPD ¶ 102. Evaluation of proposals on the basis of factors not set forth in the solicitation would be contrary to the statutes governing federal procurement. See 10 U.S.C. § 2305 (Supp. IV 1986). Since the factors listed by Kilgore were not in the solicitation, they could not be considered by contracting officials in the evaluation and award decision.

Although Kilgore asserts that Federal Acquisition Regulation § 15.605(b) requires that "quality" be an evaluation factor in every service selection, that section simply explains how quality, when it is to be evaluated, may be evaluated. It does not require such an evaluation.

Moreover, if Kilgore believed the RFP should have provided for award based on specific technical factors in addition to price, it was required to so allege before the time for receipt of initial proposals. American Hospital Supply, Equipping and Consulting, B-221357, Jan. 22, 1986, 86-1 CPD ¶ 70; 4 C.F.R. § 21.2(a)(1). Since Kilgore did not file its protest until after learning that it had not received the award, such an allegation now is untimely.

The protest is dismissed.



Ronald Berger
Associate General Counsel